



INTERIOR BOARD OF INDIAN APPEALS

Harold E. Gray v. Acting Billings Area Director, Bureau of Indian Affairs

29 IBIA 83 (02/12/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

HAROLD E. GRAY,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	Docket No. IBIA 95-91-A
	:	
ACTING BILLINGS AREA DIRECTOR, :	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 12, 1996

This is an appeal from a February 28, 1995, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying a request for a U.S. direct loan in the amount of \$200,000. The appellant is Harold E. Gray, President of Rising Wolf Construction, Inc.

Appellant applied for the loan in October 1994, through the Blackfeet Agency, BIA. He sought the funds for working capital to fund anticipated construction contracts.

In denying the loan, the Area Director stated:

An incomplete loan package was received. We requested and received additional information in support of the loan request. However, based on the most current audited and unaudited financial statements submitted, we were unable to determine repayment ability and sufficient security for the loan.

Additionally, when a lien search was conducted, we found that other lenders had first position liens on office equipment, construction equipment, inventory, and accounts receivable.

In his notice of appeal to the Board, appellant contends that, in his response to BIA's request for further information, he showed:

1. Rising Wolf Construction, Inc. was offering owned equipment for security of \$20,500.

2. John M. Gray [(Gray)], shareholder and officer, was offering owned equipment and tools for security of \$158,555.

3. It was clearly pointed out that the First Interstate Bank advance-type loan, approved for \$30,000 and drawn upon for \$24,100 and paid down to \$17,800 as of September, 1994, would be paid off in full prior to the time the BIA DIRECT LOAN was approved. All existing liens and security agreements would be terminated, and the BIA DIRECT LOAN would be secured by a first position [lien] on all company assets.

4. The projection of income and cash flow reflected income from future construction projects. The company was being careful in bidding so as not to over-reach its bonding capacity. The approval of the DIRECT LOAN was necessary in order to more aggressively bid work on construction projects.

Appellant also contended that his company had recently been awarded three contracts, totalling \$174,109. He enclosed copies of correspondence concerning these contracts.

Neither an opening brief nor an answer brief was filed. In June 1995, appellant filed a document, apparently intended as a reply brief. Because appellant did not serve the document on other parties, despite having been advised on three occasions of his service obligations, the Board does not consider it.

The Area Director's February 28, 1995, decision does not fully explain the basis for his conclusions. With respect to repayment ability, it appears likely that BIA was not satisfied with appellant's responses to its questions concerning conflicts in appellant's financial statements and income projections. However, this is not entirely clear from the decision or the record.

The Area Director also found that appellant had not furnished adequate security for the loan.

In response to BIA's request for further information, appellant stated that Gray owned equipment and tools worth \$158,555, which would be security for the loan. Appellant explained that, although the equipment and tools were the personal property of Gray, "a large percentage of this equipment and tools was not included in John M. Gray's personal financial statement because he was unable to get the equipment and tools appraised and he did not want them over or under valued" (Appellant's November 10, 1994, Letter at 1). In fact, Gray's personal financial statement listed only \$29,300 worth of "Other Personal Property & Equipment," which he described as "Personal Effects, Car, Motor Cycle, & Trucks, etc." Assuming, however, that Gray owned \$158,555 worth of equipment and tools, appellant presented no statement from Gray or other proof that Gray was willing either to donate this equipment to the company or otherwise pledge his personal property as security for the loan. Based upon the administrative record and appellant's filings in this appeal, the Board finds that BIA reasonably declined to consider this property as security.

With respect to liens against company assets, appellant does not contend that the existing liens had been released, only that they would be released. The Board finds that BIA reasonably declined to consider the assets subject to these liens as security while the liens remained in place.

Accordingly, the Board finds that the Area Director's decision should be affirmed on the basis of his finding that there was insufficient security for the loan.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's February 28, 1995, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge